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**Hasbrouck Plastics, Inc. and IUE-CWA, Local 81333,  
AFL-CIO, CLC.** Case 3-CA-25184

September 30, 2005

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND SCHAUMBER

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint and compliance specification. On December 13, 2004, the Union filed a charge against Hasbrouck Plastics, Inc., the Respondent, alleging that it had violated Section 8(a)(1) and (5) of the Act. Thereafter, on February 23, 2005, the Regional Director for Region 3 approved an informal settlement agreement entered into by the Respondent and the Union providing, among other things, for the payment of backpay to two employees named in the agreement.

The Respondent failed to comply with the terms of the settlement agreement. By letter dated March 21, 2005, the compliance officer for Region 3 advised the Respondent of its failure to comply with the terms of the settlement agreement, and that its failure to comply by March 30, 2005, would result in the Regional Director revoking the settlement agreement and issuing a complaint in the matter. The Respondent failed to respond to the compliance officer's letter, and failed to comply with the terms of the settlement agreement.

By letter dated May 9, 2005, the compliance officer informed the Respondent of the amounts owed by the Respondent pursuant to the settlement agreement, and again advised the Respondent that its failure to comply with the agreement would result in the Regional Director revoking the agreement and issuing a complaint. The Respondent failed to respond to the compliance officer's May 9, 2005 letter, and failed to comply with the settlement agreement.

Accordingly, on May 27, 2005, the Acting Regional Director revoked the settlement agreement on the ground that the Respondent had failed to remit the backpay required by the agreement, and issued a consolidated complaint and compliance specification alleging that the Respondent had violated Section 8(a)(1) and (5) of the Act. The compliance specification alleged the amounts of backpay due employees Gregory Hart and Bryon Neidbalski. The consolidated complaint and compliance specification provided that, pursuant to Sections 102.20,

102.21, and 102.56 of the Board's Rules and Regulations, the Respondent was required to file an answer to the complaint and compliance specification by June 17, 2005. Although properly served with copies of the consolidated complaint and compliance specification, the Respondent has not filed an answer.

On July 12, 2005, the Acting General Counsel filed a Motion for Default Judgment with the Board. On July 14, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days of service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the consolidated complaint and compliance specification affirmatively stated that unless an answer was filed by June 17, 2005, all the allegations in the consolidated complaint and compliance specification could be found to be true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter dated June 23, 2005, notified the Respondent that unless an answer was received by June 30, 2005, a motion for default judgment would be filed. The Respondent did not respond to this letter nor file an answer.

In the absence of good cause being shown for the failure to file an answer, we grant the Acting General Counsel's motion for default judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with an office and place of business in Lakeview, New York, has been engaged in the business of manufacturing custom fiberglass inserts for plastic vessels. During the calendar year preceding issuance of the complaint, the Respondent, in conducting its business operations described above, sold and shipped goods and materials valued in excess of \$50,000 directly to points located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that IUE-CWA, Local 81333, AFL-

CIO, CLC (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Gian Marc Casolini has held the position of the Respondent's general manager, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of the Respondent described in article I, paragraph 2, of the collective-bargaining agreement between the Respondent and the Union effective by its terms from February 1, 2004 to January 31, 2006.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from February 1, 2004 to January 31, 2006. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's employees in the unit.

Since on or about June 13, 2004, through on or about November 30, 2004, the Respondent failed to remit contractually-required payments and elective deferrals to the 401(k) plan (a/k/a Hasbrouck Plastics, Inc. Retirement Plan) on behalf of unit employees.

Since on or about November 30, 2004, the Respondent has failed to pay to unit employees contractually-required accrued vacation pay and contractually-required holiday pay for Thanksgiving Day 2004.

Since on or about December 1, 2004, the Respondent has failed to pay the health insurance premiums for the month of December 2004 for unit employees who worked for the Respondent in November 2004.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining.

## CONCLUSION OF LAW

By failing to remit contractually-required payments and elective deferrals to the 401(k) plan on behalf of unit employees, and by failing to pay accrued vacation pay, holiday pay for Thanksgiving Day 2004, and the health insurance premiums for the month of December 2004 for unit employees who worked for the Respondent in No-

vember 2004, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to remit contractually-required payments and elective deferrals to its 401(k) plan on behalf of its employees, to pay contractually-required accrued vacation pay and holiday pay for Thanksgiving Day 2004, and to pay health insurance premiums for the month of December 2004 for unit employees who worked for the Respondent in November 2004, we shall order the Respondent to make employees Gregory Hart and Bryon Neidbalski whole by paying them the amounts set forth in the compliance specification, plus interest accrued to the date of payment as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws.

## ORDER

The National Labor Relations Board orders that the Respondent, Hasbrouck Plastics, Inc., Lakeview, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with IUE-CWA, Local 81333, AFL-CIO, CLC, as the exclusive collective-bargaining representative of the employees in the following appropriate unit by failing to pay, pursuant to the Respondent's 2004-2006 collective-bargaining agreement with the Union, payments and elective deferrals to the 401(k) plan on behalf of unit employees; accrued vacation pay and holiday pay; and health insurance premiums. The unit is:

All employees of the Respondent described in article I, paragraph 2, of the collective-bargaining agreement between the Respondent and the Union effective by its terms from February 1, 2004 to January 31, 2006.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole Gregory Hart and Bryon Neidbalski for the failure to pay contractually-required vacation pay, holiday pay, and health insurance premiums by paying them the backpay amounts following their names, plus interest accrued to the date of payment, as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:

Gregory Hart	\$1,604.92
Bryon Neidbalski	\$ 679.28

(b) Make whole Gregory Hart and Bryon Neidbalski for the failure to remit payments and elective deferrals to the contractual 401(k) plan on their behalf by paying them the amounts opposite their names, plus any yield that the employees would have earned had the contributions been made.<sup>1</sup>

Gregory Hart	\$ 710.60
Bryon Neidbalski	\$1,055.02 <sup>2</sup>

(c) Within 14 days after service by the Region, post at its facility in Lakeview, New York, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 13, 2004.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at-

<sup>1</sup> The applicable yield on the 401(k) deferrals is presently unknown to the Acting General Counsel, but is within the knowledge of the Respondent.

<sup>2</sup> In sum, the total amount owed by the Respondent is \$4,049.82, plus interest and yield.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 2005

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with IUE-CWA, Local 81333, AFL-CIO, CLC, as the exclusive collective-bargaining representative of the employees in the following appropriate unit by failing to pay, pursuant to our 2004-2006 collective-bargaining agreement with the Union, payments and elective deferrals to the 401(k) plan on behalf of unit employees; accrued vacation pay and holiday pay; and health insurance premiums. The unit is:

All of our employees described in article I, paragraph 2, of the collective-bargaining agreement between us and the Union effective by its terms from February 1, 2004 to January 31, 2006.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

## DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

WE WILL make whole Gregory Hart and Bryon Neidbalski for our failure to pay contractually-required vacation pay, holiday pay, and health insurance premiums by paying them the backpay amounts following their names, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and state laws:

Gregory Hart	\$1,604.92
Bryon Neidbalski	\$ 679.28

WE WILL make whole Gregory Hart and Bryon Neidbalski for our failure to remit payments and elective deferrals to the contractual 401(k) plan on their behalf by paying them the amounts opposite their names, plus any yield that they would have earned had the contributions been made.

Gregory Hart	\$ 710.60
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HASBROUCK PLASTICS, INC.